

IN THE UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF NORTH CAROLINA
Civil Action No. 1:17-cv-00854-TDS-LPA

REBECCA KOVALICH and SUZANNE)
NAGELSKI,)

Plaintiffs,)

v.)

PREFERRED PAIN MANAGEMENT &)
SPINE CARE, P.A., DR. DAVID SPIVEY,)
individually, and SHERRY SPIVEY,)
individually.)

Defendants.)

Exhibit 3

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FOR THE MIDDLE DISTRICT OF NORTH CAROLINA
CIVIL ACTION NO. 1:17-cv-00854-TDS-LPA

REBECCA KOVALICH and SUZANNE)
NAGELSKI,)
)
Plaintiffs,)
)
vs.)
)
PREFERRED PAIN MANAGEMENT & SPINE)
CARE, P.A., DR. DAVID SPIVEY,)
individually, and SHERRY SPIVEY,)
individually,)
)
Defendants.)
_____)

VIDEOTAPED DEPOSITION

OF

DAVID SPIVEY, M.D.

At Raleigh, North Carolina

Friday, August 10, 2018

REPORTER: VONDA L. REED, CVR-M
Notary Public

REED & ASSOCIATES
2401 Whirlaway Court
Matthews, NC 28105
980-339-3575

1 Q. When did that conversation take place?

2 A. Oh, in the past week or two.

3 Q. About how long did it last?

4 A. Five minutes each, on each subject.

5 Q. What did you talk about with Mary Benton?

6 A. I talked with her mostly to get in my mind sort of
7 time frames and dates and so on about when we had
8 talked about the effects that -- I'm sorry. Was the
9 question when did I talk with her or --

10 Q. What did you talk about?

11 A. -- what was it about? Sorry. Excuse me.

12 Q. That's all right.

13 A. Let me regroup. Exactly when we began to discuss the
14 need for reorganization and cost savings as we began
15 to feel the effects of a number of factors that were
16 impacting the practice from a reimbursement
17 standpoint and also from a volume standpoint, because
18 the large players in the area, Wake Forest Baptist
19 Health, who had established a pain practice sometime
20 before, we had seen a falloff in referrals from their
21 physician offices. And also, more recently, Novant
22 Health has established a pain practice, and they are
23 referring within their organizations.

24 And so referrals have fallen off, so volume
25 has fallen. We've, over the past, since beginning

1 around 2015, have had to make significant reductions
2 in personnel and reassignment of duties and just
3 trying to keep the practice profitable and survive.
4 So I discussed some of that with her, about when all
5 that had occurred, and that's pretty much it.

6 Q. When did you have that conversation with Mary Benton?

7 A. I can't tell you exactly when, but it's been over a
8 period of weeks off and on. I would think of
9 something and just ask her, you know, "Hey, when did
10 this happen?" and so on.

11 Q. Sure. How -- well, it was just probably hard to put
12 a time on it because it was --

13 A. Total time?

14 Q. Yeah, if you had to --

15 A. Sorry. I'm supposed to let you ask the question.

16 Q. No, that's all right.

17 A. So do it.

18 Q. Yeah. About how much total time do you think you
19 spoke with Mary Benton about -- to prepare for your
20 deposition for today?

21 A. 30 minutes to an hour. Maybe longer. I'm not sure.

22 Q. All right. What did you discuss with Sherry Spivey
23 related to your deposition?

24 A. Oh. Again, trying to firm up in my mind dates when
25 certain people came on board and when things

1

2 Q. Any Medicaid?

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9 Q. Sure. All right. Getting back to your day-to-day,
10 do you manage -- well, let me back up. Are you the
11 owner of PPM?

12 A. Yes.

13 Q. Do you have any other titles that you've given
14 yourself as the owner/president; I mean, just --

15 A. I don't know if I agree with the term "given myself,"
16 but I don't know who else would have given it to me.
17 I'm referred to as president and CEO.

18 Q. Okay. That's what I was asking. Yeah, and I
19 wasn't -- since you're the owner, I wasn't trying to
20 be disparaging with that, but I don't know who else
21 would do it.

22 A. I understand.

23 Q. So as the owner, president, and CEO of PPM, would it
24 be fair to say, with just running the clinic, the
25 buck stops with you? Is that fair?

1 A. I guess so, yeah. Everything stops with me if I'm
2 the president and CEO.

3 Q. Yeah. And are you involved in personnel decisions?

4 A. Sometimes, yes.

5 Q. Tell me about that.

6 MS. SMITH: That's kind of a broad question.

7 Q. Sure. How are you involved in personnel decisions?

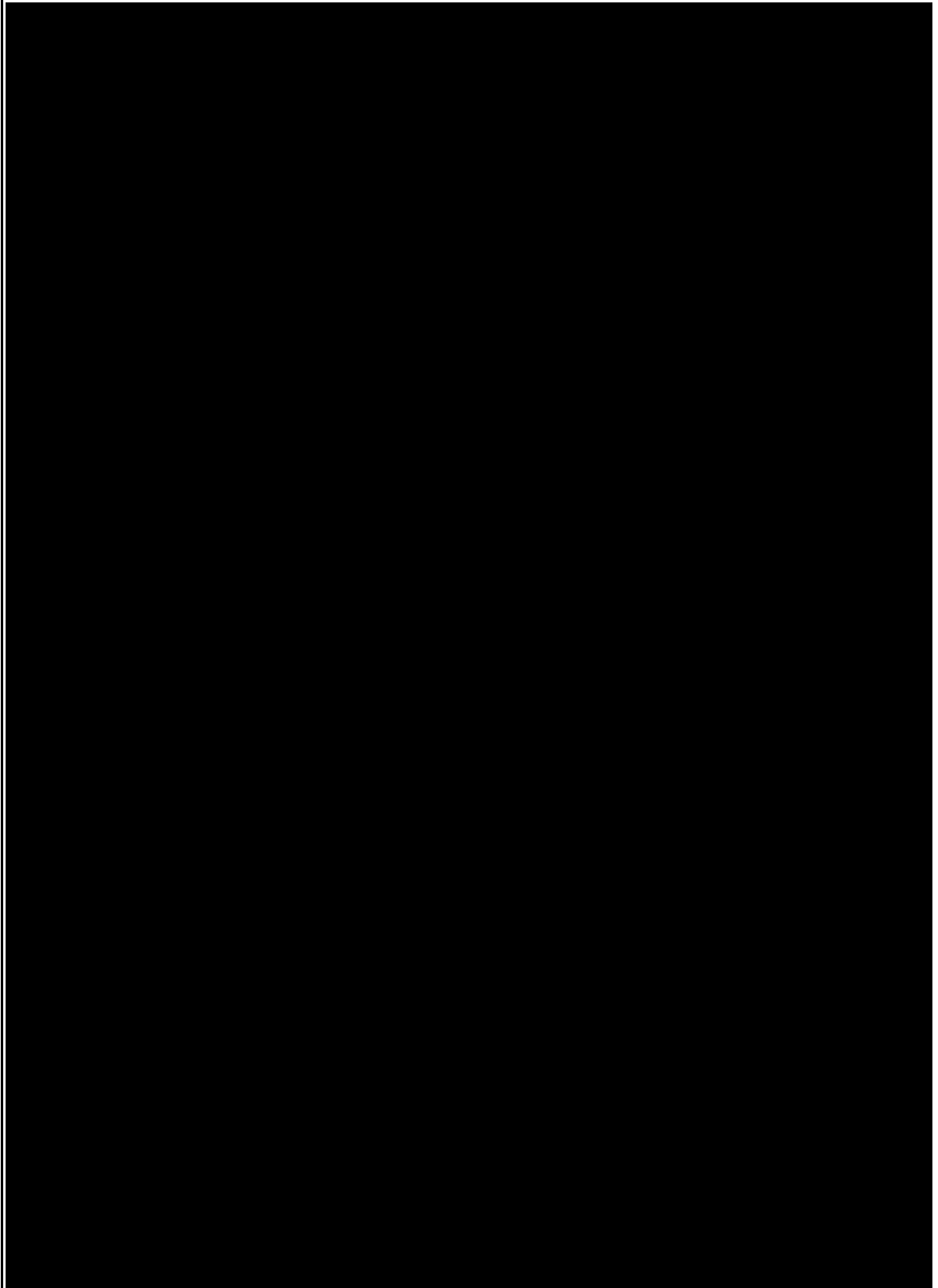
8 A. Well, particularly, if it is a person who has
9 applied -- do you mean for hiring, for example?

10 Q. Yeah. Let's go with hiring first.

11 A. Let's say we have a position open in the clinic for a
12 medical assistant, and I delegate all of the search
13 for that person and -- for example, Wendy, HR, may
14 get a number of applicants, and she'll get their
15 resumes and she'll bring them to me, and I'll look
16 them over. And I may be involved in the process that
17 early on, saying, "Well, I don't think this is a good
18 fit," or "Based on education and experience, this
19 might be a good one."

20 Then that person will be brought in and
21 interviewed by the appropriate head in the case of
22 the clinic. Sherry Spivey might be involved. The
23 clinical -- I can never remember the terms, clinical
24 director versus clinical manager. I can never keep
25 those two straight. Sorry. But, anyway, Sherry

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1 bill paying electronically. It generates checks and
2 all.

3 Q. Direct deposit?

4 A. No. Name some other things, Mr. Herrmann.

5 Q. That's all right.

6 A. Anybody. Well, I can't do that.

7 Q. That's okay.

8 A. You know, where it's done on the computer, basically,
9 you know, and the checks are generated that way.
10 Anyway, I'll think of it in a minute, perhaps;
11 66-year-old brain.

12

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14

15 in addition to the front office stuff that she was
16 doing. So now she's my personal assistant and does
17 my scheduling and makes sure I am where I'm supposed
18 to be when I'm supposed to be, et cetera, in addition
19 to her other duties. And Ms. Benton has done the
20 accounts payable. And we have a nice organized flow
21 now where we know what's happening and if it should
22 be paid and so on. It's very accountable. So she
23 was involved in that decision.

24

25

1 A. We -- let me think for a minute.

2 Q. Do you recall that testimony? That's my question.

3 A. Oh, yes.

4 Q. And I think you were heading to where I was going to
5 go. Do you have a better estimate of when that
6 reorganization would have started?

7 A. Really started, in earnest, in '15.

8 Q. Early 2015?

9 A. Uh-huh.

10 Q. Yes.

11 A. Yes. I'm sorry. Yes.

12 Q. That's okay.

13 MR. HERRMANN: Let's go ahead and -- it's
14 going to take me a while to get through all
15 these. Let's go ahead and have lunch.

16 VIDEOGRAPHER: Off record at 12:18 p.m.

17 (Luncheon recess from 12:18 p.m. to 1:22 p.m.)

18 VIDEOGRAPHER: On record at 1:22 p.m.

19 By Mr. Herrmann:

20 Q. All right, Dr. Spivey, just one question before we go
21 back into kind of the list of employees. What is
22 RegenerAge? Have you heard of that?

23 A. Yes, I have.

24 Q. What is it?

25 A. It's a -- it's not a subsidiary. It's a section --

1 truthful until they convince me otherwise. And I
2 have no reason to believe that Scarlet would lie, but
3 all I know is, if she says that she wasn't given any
4 train- -- again, I don't know what she has said. If
5 she says she was given no training on Prognosis, that
6 is an untruth.

7 Q. When you say "on Prognosis," that is the same exact
8 thing as EHR?

9 A. Correct. That's our EHR.

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22 Q. Why was it rapid and necessary?

23 A. The reorganization?

24 Q. Yes.

25 A. Beginning in, actually, late 2014, but on through

1 2015, we began to not only see reimbursement drop,
2 not only in the lab, but in other CPT -- other areas
3 as well. We also would get these notifications from
4 commercial carriers and also from Medicare. And I'm
5 going to paraphrase, if I may, because I can't quote
6 them. "By the way, July 1st, we're going to be
7 cutting your reimbursement for filling in the CPT
8 code by X amount." In particular, they were
9 targeting urine toxicology testing, which was, as
10 mentioned yesterday, at one point over half of our
11 revenue.

12 So we knew -- and they were going to be very
13 aggressive about it. And they told us they were
14 going to be aggressive about it. And so we knew that
15 we had to get leaner very quickly. And at the same
16 time, we're still going through the process of
17 implementing the EHR and everything, and so it was a
18 major reorganization.

19 Q. Yesterday, your wife testified that it's still
20 ongoing today. Do you recall that?

21 A. Yes, I do.

22 Q. Is that true?

23 A. Yes.

24 Q. So tell me how it's rapid.

25 A. Well, maybe it's not as rapid today as it was

1 A. Part of your question was had we -- I believe was did
2 we try to find anything else for Ms. Bailey to do at
3 that point. And just to reiterate, we had already
4 tried her in so many different positions, I didn't --
5 I just really didn't feel there was anyplace where
6 she could have fit in, anything else for her to do.

7 Q. Okay. You said, "The enemy of my enemy is my
8 friend," that sort of thing. And you were talking
9 about, I think, the dynamic between Sherry Spivey,
10 Sue Nagelski, and Jennifer Bailey.

11 A. Correct.

12 Q. Could you just explain that a little more?

13 A. Well, Sherry had become more dissatisfied with
14 Ms. Nagelski's unwillingness to be present at the
15 office. And that is why we had brought in, I believe
16 at the end of '15 -- I may be wrong on those dates;
17 maybe it was later -- Ms. Yontz to do full-time,
18 on-site HR work. I'm not sure. I may be off a full
19 year on that. But, anyway, she had become very
20 dissatisfied about that. I had become a little more
21 dissatisfied about it.

22 Your question was about the conflict between
23 Sherry and Ms. Nagelski and Jennifer Bailey; is that
24 right?

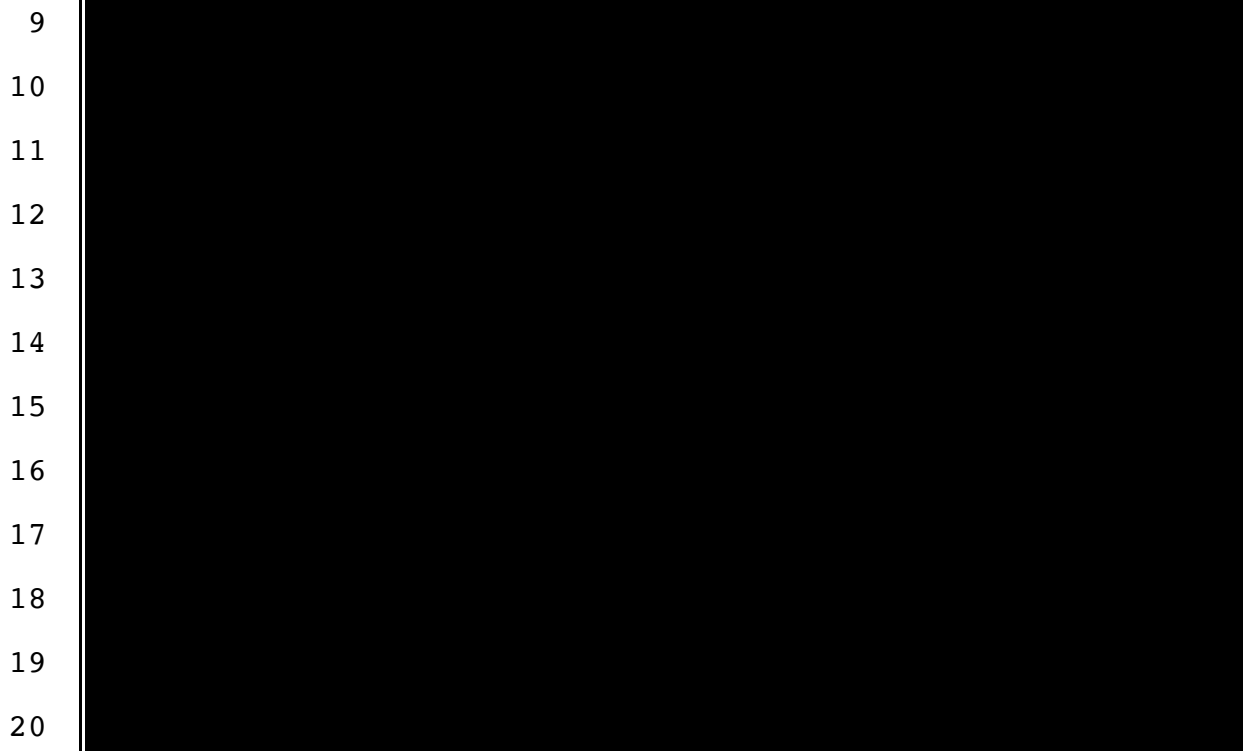
25 Q. Well, specifically, "The enemy of my enemy is my

1 Austria or she was watching a bike race? What do you
2 remember about why she was going to Austria?

3 A. My recollection, she was riding. Whether it was a
4 race or not, I can't remember. But my recollection,
5 she was actually riding a bike.

6 Q. Do you recall the details of what she was going to
7 do?

8 A. No.



21 Q. Let's go to Exhibit 59. It should be in your book.

22 A. Okay.

23 Q. Now, this was something that was reviewed yesterday,
24 but it's an e-mail chain that involves Michael
25 Jacobson and an employee named Sara Wilson. Do you

1 Do you see that?

2 A. I do.

3 Q. Did you disagree with Ms. Nagelski's assessment at
4 the time?

5 A. I agreed that it's a potential, quote-unquote,
6 "disaster waiting to happen," end quote.

7 Q. Why do you agree with that?

8 A. Well, I think dismissing three employees at one time
9 is a pretty bold move, but necessary at the time.

10 Q. And then if you look at the next page --

11 A. What was the -- may I ask a question?

12 Q. Yeah.

13 A. What was the date on this? There's just times. I
14 don't know what --

15 Q. Yeah. Well, if you go down --

16 A. Oh, here we are, July twenty- -- I'm sorry. I can
17 see it now. I got it. July '15, okay.

18 Q. So it looks like on Tuesday, July 28th, you respond
19 to Sue and say, quote, "New employees are ready to
20 start on Monday. The terminations would be done on
21 Friday as planned. Have the severance packages ready
22 and to Sherry by Thursday noon. We will handle
23 this." Right?

24 A. Yes.

25 Q. So you were firing three employees in Greenville.

1 A. Greensboro.

2 Q. Greensboro. And new employees were starting there
3 the following Monday, right?

4 A. The terminations were on Friday. They were set to
5 start on Monday, yes.

6 Q. How many new employees did you put in there at the
7 time?

8 A. I don't know.

9 Q. Go to Exhibit 62.

10 A. Okay.

11 Q. Have you seen this document before?

12 A. I saw it yesterday.

13 Q. And it's an e-mail from Sue Nagelski to you on
14 July 28th, right?

15 A. Yes.

16 Q. And this was produced to me by your lawyers.

17 A. Uh-huh.

18 Q. And again, on this page, Sue says that she can rework
19 her schedule to be present Friday, but HR is only a
20 portion of what's needed. And she wants legal
21 representation to be there, right?

22 A. So it says.

23 Q. Do you think she was lying about that?

24 A. No.

25 Q. Did you agree that it was important to have lawyers

1 documented oral warning, written warning, probation,
2 and then discharge. Is that right? Or let me put
3 that a different way. They may involve any of
4 those -- those are the three options: documented
5 oral warning, a written warning/probation, or
6 discharge. Right?

7 A. Yes.

8 Q. And here even the oral warning says documented,
9 right?

10 A. Yes.

11 Q. Now, you've described today some instances where you
12 counseled an employee and didn't document it, right?

13 A. Yes.

14 Q. Do you regret not doing that?

15 A. No.

16 MR. HERRMANN: I think this will be a new
17 exhibit.

18 (Plaintiff's Exhibit 90 was marked.)

19 Q. Vonda is going to hand you Exhibit 90. Do you
20 recognize that document?

21 A. Yes.

22 Q. What is it?

23 A. It's the summary plan description of our cash balance
24 plan.

25 Q. And is this something that PPM currently utilizes?

1 A. Yes.

2 Q. When did it first start using the cash balance plan?

3 A. January 1, 2014.

4 Q. Were you involved in the rollout of the cash balance
5 plan?

6 A. Can you please define rollout?

7 Q. Well, let's ask a different question. Were you
8 involved in the decision to implement a cash balance
9 plan?

10 A. Yes.

11 Q. Describe that for me, your involvement.

12 A. Our wealth management people at BB&T who do our
13 retirement and also our financing and so on, because
14 Sherry and I are near retirement, fairly near
15 retirement, and with input from Ms. Nagelski, wanted
16 to set up an additional bucket, if you will, into
17 which and with which Sherry and I could fund our
18 retirement.

19 So we met with them several times; we, the
20 BB&T folks -- I don't remember if at that time the
21 Verisight, now the third-party administrator --
22 shoot. Now I can't remember their name. Anyway, if
23 they were on the phone or if we consulted with them.
24 But, anyway, they designed this plan into which --
25 basically, they said, "We can do this. It's legal.

1 You're going to have to contribute some for your
2 employees."

3 And I said, "Fine." And so that was my
4 involvement.

5 Q. So am I mischaracterizing this if I say the main
6 driver of this, as you just described it, was to help
7 fund your kind of ending or upcoming retirements?

8 A. Yes.

9 Q. And then a secondary benefit would be that your
10 employees would also be able to take part in this,
11 right?

12 A. Yes.

13 Q. After that, did you take any other steps to set up
14 the cash balance plan?

15 A. I know that Ms. Nagelski worked with the BB&T folks
16 and the -- at that time, Verisight. I can't remember
17 the name now. But anyway, pretty much, you know, I
18 delegated it. Was your question did I take any
19 additional steps?

20 Q. Yeah.

21 A. No.

22 Q. And when did this plan go live or become active?

23 A. January 1st, 2014, I believe.

24 Q. Are you sure it didn't become live at some date after
25 that, and then it was kind of grandfathered back to

1 Q. Why did you, in your forward of this e-mail to Wendy
2 Yontz, announce that you were firing or planning to
3 fire Sue Nagelski?

4 [REDACTED]
5 [REDACTED]
6 [REDACTED]
7 [REDACTED]
8 [REDACTED]

9 since it was still an ongoing thing and since it was
10 an open case and had not been resolved, and Sue was
11 going to be terminated, I felt it important that we

12 [REDACTED]

13 Wendy could then assume handling of that and
14 interfacing with the attorney and finding out what
15 was going on and so on.

16 Q. When did you decide to fire Sue?

17 A. I guess sometime toward the end of 2015 or early
18 January of 2016.

19 Q. Tell me about that decision. Did you consult with
20 anybody to make the decision?

21 A. Yes.

22 Q. Who did you consult with?

23 A. I consulted with the BB&T people. I consulted with
24 Turlington & Company. That's pretty much it.

25 Q. Did you talk to Sherry Spivey about the decision?

1 Q. Who made the decision to reassign Sue's duties?

2 A. I did.

3 Q. And specifically -- I know you just said them,
4 but -- well, let's talk -- the HR. When did you
5 decide to reassign her HR duties?

6 A. I think that was late 2015 also.

7 Q. And let me know if this helps you. And you can look
8 at it, too, if you want, Exhibit 28. Wendy Yontz's
9 hire date is listed as November 23rd, 2015.

10 A. That sounds about right.

11 Q. Would that sort of be about the same time you decided
12 to reassign Sue's HR duties?

13 A. Yes.

14 Q. Okay. Do you think this conversation that you had
15 with Jonathan Cochrane was before or after
16 November 23rd of 2015? Again, that's Wendy Yontz's
17 start date.

18 A. Uh-huh. Probably after.

19 Q. Do you know for sure if it was after, or are you
20 guessing?

21 A. Well, I'm just thinking that -- well, it could be off
22 because that's her start date. But we had decided to
23 bring HR in-house and everything, so I'm looking at,
24 okay, so that duty is gone. So it may have been -- I
25 would just say it was around that time. Like I said,

1 Q. You said compliance was another duty that was
2 reassigned. Who was that reassigned to?

3 A. In part to Maureen O'Sullivan.

4 Q. When did that happen?

5 A. When we were putting -- after we put Prognosis in.
6 Let's see. During the time that we were putting
7 in -- implementing Prognosis.

8 Q. So that would have been maybe --

9 A. Late '15, I think, also.

10 Q. You referenced conversations that happened before
11 Yontz actually started about having someone take over
12 Sue's HR duties, right?

13 A. Yes.

14 Q. When did those conversations start occurring?

15 A. Long before that.

16 Q. And just as a time reference, the issue that we
17 looked at earlier with the terminations of the
18 Greensboro employees, that was the last of July,
19 beginning of August of 2015. Was it around that
20 time?

21 A. No. It was before that.

22 Q. When? How long before that?

23 A. I'm not sure. Maybe as far back as probably 2014.

24 We had been -- Sherry had had some issues. I had
25 always wanted Sue to be in the office more. In fact,

1 when we moved to the new building, we created an
2 office for her downstairs. There was an entire
3 office down there where we were going to put the lab
4 in one area that we had designated and that
5 Ms. Kovalich had set up for us. We were going to put
6 not only the screening lab, but also the confirmation
7 laboratory down there eventually. In fact, we had to
8 set it up to make sure it had proper air conditioning
9 and all that stuff, as I recall.

10 And then the front office with the
11 windows -- I realize you can't see this, but there
12 was a nice office there with windows that she was
13 going to share with Ms. Kovalich. And as a matter of
14 fact, Ms. Nagelski actually had moved some stuff in
15 there. I think a chair, a table or something. And
16 there were a couple of items that were there when we
17 bought the building and while we were upfitting that
18 Sue wanted to keep. And we had put those in there
19 for her. And so she had known for some time that I
20 really wanted her to be there more.

21 And then there were some issues that Sherry
22 Spivey had with some of the employees under her
23 regarding PTO and change in status and things like
24 that. And more and more, as we had more and more
25 employees -- and so this began to happen way back,

1 you know, maybe even in '13 -- I don't know -- that
2 employees were griping because they didn't have -- I
3 mean, they had been around and been employed in other
4 areas, and they knew that they were supposed to have
5 someone on-site that would deal with these issues.

6 And so I had implored Suzanne many times,
7 Ms. Nagelski, to at least set aside, you know, a
8 couple of days or three days a week that she could be
9 on-site and talk with these folks. So as time went
10 on, the pressure to have someone on-site.

11 And then, also, some of these duties in HR
12 that are kind of shared with Maureen, they involve
13 things where you've really got to be there, you know,
14 to take care of issues on a day-to-day basis,
15 compliance and security of the Internet and all that
16 stuff. So that was all kind of rolled in together.
17 We really needed people to be there. So --

18 Q. So my understanding is, you were discussing -- your
19 point of that conversation when we were talking about
20 Jonathan Cochrane was because you were thinking about
21 whether or not you still needed Sue Nagelski to work
22 for PPM, right?

23 A. Yes.

24 Q. And that happened at around -- you were already
25 having those conversations at around the same time

1 that you brought Wendy Yontz on, right?

2 A. Yes.

3 Q. Do you recall when -- I know she started in November
4 of 2015. Do you recall when you interviewed
5 Ms. Yontz?

6 A. I don't.

7 Q. Do you think it was more than a month before that?

8 A. I don't think it was more than a month.

9 Q. And I did assume something. Did you interview
10 Ms. Yontz?

11 A. Yes.

12 Q. Did you personally do that?

13 A. Yes. Mrs. Spivey did, and I did too.

14 Q. You and Mrs. Spivey interviewed Ms. Yontz?

15 A. Yes.

16 Q. Why was Ms. Spivey involved in the interview of Wendy
17 Yontz?

18 A. Mrs. Spivey was the one who was feeling the pressure
19 from employees more than anyone else. Although, I
20 did get input from other managers; Brandi Frey, for
21 one, and the front office manager at one time. It
22 wasn't Betty Webb. But there were rumblings from
23 other areas that, you know, they needed someone
24 on-site. But a lot of it had come from Sherry.

25 And so, again, I would much have preferred --

1 Sue is very bright, and I would have much preferred
2 to have her on-site and be the HR person. She didn't
3 like HR stuff very much. She expressed that, that
4 she didn't enjoy it and didn't want to do it, it was
5 kind of a hassle. I'm paraphrasing. I don't want to
6 put words in her mouth. But she wasn't real fond of
7 it, I think it's fair to say.

8 So Mrs. Spivey was feeling the pressure more
9 of needing to have an HR person on-site. And she had
10 a -- somehow she interacted with Ms. Yontz, who is
11 Sherry's brother's adopted daughter. So they got
12 together for some reason. I don't know if it was a
13 family function or whatever. And Ms. Yontz told her
14 that, you know, that she had been doing HR for some
15 time and was taking HR courses and had an interest in
16 it and all that. She was also working on getting her
17 paralegal certification at that time.

18 So I think Mrs. Spivey saw that it was a
19 reasonable resume and came to me and said, "Hey, you
20 know, we need an HR person on-site," and so asked me
21 to talk with her and look at her qualifications and
22 all.

23 Q. I guess this is obvious, but Wendy Yontz was not a
24 clinic employee, right?

25 A. No.

1 Q. And I know Ms. Spivey is involved in hiring people in
2 the clinic. Right?

3 A. Yes.

4 Q. Are you aware of any other nonclinic employees that
5 she has helped interview?

6 A. Certainly in the past, when we weren't as organized
7 as we are, when we were smaller, and then certainly
8 in the old building and everything. Clearly she did,
9 yes.

10 Q. So what years are we talking about? What time period
11 are you referring to?

12 A. We're talking 2007, probably through 2010, 2012
13 maybe. And then at that point, because of the
14 problems we were having with the lab, Ms. Kovalich
15 got reintroduced to us and solved that lab problem,
16 for which we were grateful. And then she sort of saw
17 that we had some needs for reorganization. And at
18 that point Ms. Kovalich did a lot of the hiring,
19 basically. She hired a lot of people during that
20 time.

21 Q. Right.

22 A. Some even without my input. You know, I just trusted
23 her enough and had respect for her business acumen
24 and everything, and her personal skills. And so I
25 said, "If you think that's the person, get 'em."

1 Q. Other than Wendy Yontz since 2012, can you name any
2 other employees that were hired outside the clinic in
3 which Ms. Spivey had a role in the interview process?

4 A. I can't think of anyone offhand.

5 Q. What specifically did Sue say to you about not liking
6 her HR duties?

7 A. I can't remember specifically what she didn't like,
8 but she expressed that, you know, she didn't enjoy
9 it.

10 Q. When did she say that?

11 A. I have no idea.

12 Q. Did she just say, "I don't enjoy this," or do you
13 recall the conversation?

14 A. There was more than one conversation. Some of them
15 shorter, some of them longer. But basically she
16 expressed that, you know, she didn't enjoy it very
17 much.

18 Q. About how many conversations did you have with her
19 about that?

20 A. Three.

21 Q. The first of the three, was that in person or over
22 the phone?

23 A. I don't recall.

24 Q. The second one, was that in person or over the phone?

25 A. I can't tell you one, two, and three, but I know that

1 at least one, maybe more than one, were face-to-face.
2 They may all have been face-to-face. None of them
3 may have been over the phone.

4 Q. Do you remember any specifics beyond what we've
5 already talked about with those conversations?

6 A. No. I think at one point she did mention that she
7 didn't really have any HR training and experience,
8 and so she was kind of doing it -- Sue, to her
9 credit, particularly early on, would offer to assume
10 duties, you know, particularly when we were a real
11 small practice and everything. And so she starts --
12 sort of picked up HR when we were smaller, in the old
13 building, and ran with it, so to speak.

14 Q. Prior to Ms. Yontz -- let's go back to 28. Yeah, you
15 already have it there.

16 A. Oh.

17 Q. We're just going to talk about the first page. So
18 Ms. Yontz came in in November of 2015, right?

19 A. Is she on here?

20 Q. Well, these are the terminations, so --

21 A. Oh.

22 Q. I'm not ask- -- like, we've just talked about that.
23 Do you recall having that conversation that we just
24 had about --

25 A. Yes. November of '15, yes.

1 Q. Do you know whether or not that conversation was with
2 just Scott Hummel, or were other people present?

3 A. Brenda Thrower. I had a conversation with Brenda
4 Thrower too.

5 Q. The same conversation, or was she --

6 A. Pretty much. They're the two folks that we deal with
7 at Turlington & Company.

8 Q. Sure. And I asked that poorly. Was it -- not the
9 content of it being the same, but was it in fact one
10 meeting that you remember that you had with
11 Mr. Hummel and Mrs. Thrower at the same time, or they
12 were separate conversations?

13 A. I don't remember.

14 Q. And what did you speak with Mr. Hummel about
15 regarding Sue Nagelski's termination?

16 A. Well, I didn't ask him about her termination
17 specifically. What I asked was, you know, "Do we
18 need someone in the position of liaison between
19 PPMSC, BB&T, and Turlington & Company in order to do
20 business?"

21 Q. And Mr. Hummel said you don't?

22 A. Correct.

23 Q. And you had the same conversation with Ms. Thrower?

24 A. Correct.

25 Q. And this would have also been in late 2015?

1 decision to terminate Ms. Kovalich?

2 A. Yes, except somewhere in here I thought it said
3 either -- oh, it does say direct or indirect. Yes.

4 Q. Yeah. And we'll get into that. I just want to go
5 through each one.

6 A. Yeah.

7 Q. So Mary Benton, when did you first specifically
8 discuss the prospect of terminating Rebecca
9 Kovalich's employment? When did you first have that
10 conversation with Mary Benton, if you did?

11 A. Probably early '16, spring of '16.

12 Q. Okay. And do you recall one conversation or multiple
13 conversations about that with Mary Benton?

14 A. More than one.

15 Q. The first one that you recall, do you know if that
16 was in person or over the phone?

17 A. They were all in person.

18 Q. What do you recall about the first conversation where
19 you specifically talked about terminating
20 Ms. Kovalich?

21 A. Mary Benton, as a part of the reorganization process,
22 said, "Why are you paying her? What is she doing?"
23 And I explained that she was very essential in our
24 development of the laboratory and that I was
25 continuing to pay her for the reason I've already

1 described, to which Ms. Benton likely replied,
2 "You've got a business to run here and you're about
3 to run it into the ground. You better -- you've got
4 to look at this a little more carefully." So --

5 Q. Before Mary Benton made that recommendation, had you
6 considered terminating Ms. Kovalich?

7 A. Yes. I considered a lot of different people,
8 terminating a number of different employees.

9 Q. When was the first time that you considered
10 terminating Ms. Kovalich?

11 A. Probably in mid to late 2015.

12 Q. Do you recall a second meeting with Ms. Benton where
13 you discussed terminating Ms. Kovalich?

14 A. I recall several meetings with Ms. Benton wherein we
15 discussed how we needed to reorganize. And
16 specifically about Ms. Kovalich, no. I do recall
17 that she sent me an e-mail expressing some concerns.
18 That may be one of the -- I don't know. I recall
19 seeing an e-mail where she expressed some concerns
20 about, you know, "Why are you still paying her?"
21 Again, same sort of idea. And -- anyway.

22 Q. Would that e-mail have happened after your in-person
23 talk where she said, "Why are you paying her? What
24 is she doing"?

25 A. Most likely, yeah. I'm not certain of that, but most

1 A. Specifically, no, I don't.

2 Q. And from your answer, I just want to clarify. It's
3 possible she did and it's possible she didn't?

4 A. Yes.

5 Q. You just don't remember?

6 A. Yeah.

7 Q. Okay. Gretchan Culler Hawks, what input did she have
8 into the decision to terminate Ms. Kovalich?

9 A. I asked her if the lab was able to run okay if
10 Ms. Kovalich was gone.

11 Q. When did you ask her that?

12 A. I don't remember. Sometime probably around the same
13 time I was talking with Ms. Benton about
14 reorganization, so probably -- it may have been on
15 into 2016. Sometime late '15, early '16.

16 Q. What did she say in response?

17 A. She said that the lab could run okay, that a lot the
18 duties she was doing -- she was doing a lot of the
19 ordering herself and things like that. And Select
20 was doing all the compliance, regulatory things, and
21 so -- that was my understanding at the time. And so
22 it didn't look like the position was necessary. If
23 we weren't developing any new things, if the lab was
24 just sort of running on its own, that they were okay.

25 She is a medical technologist and is certainly

1 A. If you say so.

2 Q. Go ahead and take a look at it.

3 A. I'll take your word for it.

4 Q. Well, go ahead and look at Exhibit 20.

5 A. All right. We're talking Cindy Ingold, right?

6 Q. Yeah.

7 A. Okay. (Witness reviews document.) Yes.

8

9

10

11

12 Q. Now, was it different for you when you learned that
13 Ms. Nagelski had accused PPM of age discrimination
14 than it was for these other employees that had done
15 it?

16 A. Yes.

17 Q. Why so?

18 A. Because I felt that we had a -- we, as a practice,
19 and we, as a family, and I personally had a different
20 relationship with her than I did with these other
21 employees. She was family. She had a special
22 status, if you will.

23 Q. And when you learned that she had accused PPM of age
24 discrimination, her mother was still working for PPM,
25 right?

1 A. Yes.

2 Q. I mean, maybe it's just a normal reaction. But, I
3 mean, was that awkward for you?

4 A. A little bit, yes.

5 Q. What do you mean by that?

6 A. Well, I was concerned that -- well, two things. One,
7 I percolated and -- not percolated. I thought about
8 this, you know, for some time, so it wasn't an
9 immediate thing. But I wanted to talk with Sue. But
10 I knew that I couldn't because she started this
11 action. So now it's too late. I can't go back. I
12 can't talk with her.

13 But I knew that her mother and she, most
14 likely, communicated fairly regularly. So I called
15 Ms. Kovalich, and I said to her, basically, "I don't
16 understand why Sue has done this. Please make sure
17 she has read my letter carefully," and that --
18 because in my mind at that time, I wasn't even
19 terminating her. I realize now that it was a
20 termination of employment. But I guess in my mind at
21 the time, there was more of a, "Hey, let's still work
22 together, but on a different -- with a different
23 business arrangement," sort of as on a project basis,
24 let's say.

25 So all I -- what I asked Ms. Kovalich to do

1 is, "Please make sure Suzanne has read this. I know
2 I can't talk with her because of this. Please make
3 sure she's read this." And that was about it.

4 There was a later conversation wherein -- as
5 you said, it was awkward that Ms. Kovalich was still
6 employed and we had terminated her daughter. And
7 Ms. Kovalich was in a position where, at that time
8 with the lab and with our relationship with Select
9 Laboratory and all of that, where if she had wanted
10 to retaliate against us for firing her daughter, my
11 concern was that she could hurt us. She could have
12 sabotaged the lab. She could have -- I don't know.
13 I don't mean, you know, mechanically sabotaged it.
14 But I really didn't feel that she would do that
15 because, as I had said before, I had a lot of respect
16 for her as a businesswoman and all that.

17 So as I thought about this, I thought,
18 "There's really no way I can make this perfectly safe
19 for us," but what I wanted to do was just hear from
20 her that despite the fact that I had terminated
21 Suzanne, that she was still in our camp and would
22 still do the -- you know, not do anything to sabotage
23 our laboratory billing. Because, again, even though
24 our revenue was dropping as a result of the changes
25 in reimbursement for laboratory services, it

1 still -- and still is an important part of our
2 revenue stream for the practice. It allows us to do
3 other things that we don't get paid for.

4 So I called her back and I just said, "I need
5 to hear from you that my firing of Suzanne is not
6 going to cause you to do anything to retaliate
7 against us, to do anything to hurt us. I just need
8 to hear you say that." And she did. And I said,
9 "Thank you." And that was it.

10 Q. Was Ms. Spivey around when you were talking -- when
11 this second call happened; in other words -- let me
12 clarify. During Ms. Kovalich's deposition, I think
13 she testified to not the exact conversation but
14 something similar. But one thing she said was that
15 Ms. Spivey was in the background also expressing
16 fears about retaliation.

17 A. I don't recall that at all.

18 Q. You don't recall that testimony?

19 A. Yes, I recall the testimony.

20 Q. Do you know one way or the other whether Ms. Spivey
21 was there when you had that conversation with
22 Rebecca? And by "there," I mean like close in
23 proximity to you.

24 A. The first -- I know I've muddied the waters here with
25 my --

1 Q. That's okay.

2 A. The first phone call or the second one?

3 Q. Yeah. Let's go through both of them.

4 A. Okay.

5 Q. So was Ms. Spivey present -- and when I say
6 "present," again, let's say within the same room as
7 you.

8 A. Earshot?

9 Q. Earshot. That's a good way to put it. Was she
10 within earshot of you for the first call?

11 A. No.

12 Q. Was she within earshot of you for the second call?

13 A. No.

14 Q. Are there any other calls that you're aware of?

15 A. No. Well, what do you -- time out. Calls to
16 Ms. Kovalich about those two subjects?

17 Q. Yes.

18 A. No.

19 Q. When in relation to receiving this -- because I know
20 you said that you were aware that Sue was
21 represented, so you couldn't talk to her.

22 A. Right.

23 Q. How long do you think after receiving this that you
24 made that first call to Rebecca?

25 A. I think it was after I had received the second letter

1 from you. As I said, it was -- or somewhere around
2 that time. I know I just kind of was in a bit of a
3 tailspin.

4 Q. If you want to go to 92, that might refresh your
5 recollection on that.

6 A. Okay.

7 Q. Is that the second letter that you received from me?

8 A. Yes.

9 Q. So you think it was sometime kind of close to this
10 but after March 9th of 2016?

11 A. Most likely, yes.

12 Q. Where were you when you -- were you at the office --

13 A. Yes.

14 Q. -- when you called Rebecca?

15 A. Yes.

16 Q. And the second call, when was that, as best you can
17 put a date on it? When I say "date," I mean time
18 period.

19 A. Sometime after this, but not too long after this, I
20 guess. So it was probably late March. That's a
21 guess, my best guess.

22 Q. And if you go ahead and just take a look at
23 Exhibit -- you can take a look at 93 and 94. They're
24 both really short. Just they're --

25 A. Yeah.

1 have been more than ten years ago. I don't know.

2 Q. Going back to Exhibit 1, same page, page 8, the stuff
3 I had you review.

4 A. Hang on, please. Okay.

5 Q. Do you recall being informed of -- you know, you
6 heard testimony about it yesterday -- an incident
7 where Ms. Spivey, you know, yelled, "Fuck you,
8 Rebecca," or "Fuck it," or something like that while
9 slamming a door at some time in 2013? Did you ever
10 find out about that, like, as it happened?

11 A. No.

12 Q. Did you just find out about it through this lawsuit?

13 A. Yes.

14 Q. Paragraph 36 talks about an occasion where Rebecca
15 was in Charleston and you called and said you had to
16 see her, said you were going to come to Charleston.
17 And she, I believe in her deposition, said that, you
18 know, the conversation also was woven with work
19 stuff. And she said, "Don't come." And you
20 interrupted and said, "What are you wearing?"

21 Do you deny calling her and telling her that
22 you had to see her at some point in May 2014?

23 A. I do.

24 Q. Do you deny ever calling her and saying that?

25 A. That I had to see her?

1 Q. Yeah.

2 A. I do.

3 Q. Do you deny that you asked her, quote, "What are you
4 wearing"?

5 A. Here's my recollection of the conversation.

6 Q. Sure.

7 A. Is that permissible?

8 Q. Yes.

9 A. Okay. I called Rebecca to ask her about some stuff
10 about the lab. Didn't know if she was in Charleston
11 or where she was, and I called her on her cell phone.
12 And she had in the past suggested many times that I,
13 with or without Sherry -- and I'm not suggesting that
14 that was an invitation for a relationship, but with
15 or without Sherry, that I should come down to
16 Charleston and unwind and decompress. I'm
17 paraphrasing. Because she knew that -- because she
18 had been around and seen the practice, that it was
19 high pressure and that, you know, there was a lot
20 going on.

21 So when I called her, what I said was,
22 basically, "Man, I need to get down there." Okay?
23 Like, we had had many conversations where she had
24 suggested that.

25 So it's like -- I have a friend who is a

1 physician. Well, he's my physician, actually. And
2 we've talked -- almost every time I go in there we
3 talk about fly fishing, and he knows that I fly-fish.
4 And we've talked about it. And he said he'd like to
5 try it sometime. So almost every time I go in there
6 we say the following, "We've got to get together and
7 go fly fishing." And it never happens. It's a
8 similar situation.

9 We talked about, you know, coming down and
10 decompressing in Charleston or at the Isle of Palms
11 or whatever many times and would always -- I would
12 say, "Yeah, got to do that. Got to get down there
13 and do that." That's what this was.

14 Q. Okay.

15 A. As far as the "What are you wearing?" my recollection
16 of the conversation is that Rebecca said, "Well, you
17 can't come now because I've got a bunch of -- I'm
18 having a girl party." I'm paraphrasing. "I've got a
19 bunch of girlfriends down here and we're having a
20 pool party." And so I've got this image in my mind
21 of a number of these women that Rebecca knows and
22 that I knew, you know, down there having a pool
23 party.

24 And so I'm, you know, "Are y'all lolling
25 around in bathing suits? Are you in evening gowns or

1 what? So what are you guys wearing?" And I might
2 have said, "What are you wearing?" referring plural
3 to "you," not to Rebecca specifically. That's my
4 recollection of the conversation.

5 And then it was all about the lab and the
6 questions I had, something about -- I believe it was
7 about Gretchan. I can't remember, but it was about
8 the lab.

9 Q. All right. The allegations in paragraph 37 about a
10 roughly November 2014 conference room meeting with
11 you and some other physician where you said to her,
12 you know, "I gave you a chance," does this ring any
13 bells to you?

14 A. The only time that I was in a conference room with
15 Rebecca and another physician was when we were
16 working with Dr. Scheutzow about the age management
17 thing. And I don't remember this at all, but I can
18 speculate what might have been said. I don't know if
19 that's admissible or not, but --

20 But it was during the time when I had been
21 giving Dr. Scheutzow chance after chance after
22 chance, you know, going to get more training and all
23 that. And I might have said something like -- when
24 he left, might have said, "Well, we gave him a
25 chance." You know?